



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 11, 1997

Mr. David M. Douglas
Assistant Chief
Legal Services
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR97-2731

Dear Mr. Douglas:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111196.

The Texas Department of Public Safety (the "department") received a request for

1. All vehicle accident reports, dispatch logs, towing records, and 911 records concerning motor vehicle collisions that occurred on Sunday, September 28, 1997, on southbound I-45 near Delany Road, involving D.W. Moten, Nanci Freudenburg and Henry Freudenburg.
2. All vehicle accident reports, dispatch logs, towing records, and 911 records concerning a collision of a motor vehicle and a bicycle ridden by Marlana Suzan Fowler that occurred on Thursday, September 25, 1997, on FM 1788 west of the intersection of State Highway 191.

You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. You have submitted a representative sample of the requested information for our review.¹

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 excepts from disclosure information made confidential by law, including statutory law. The Seventy-fifth Legislature repealed V.T.C.S. article 6701d, and amended section 550.065 of the Transportation Code concerning the disclosure of accident report, dispatch log, towing record, and 911 information. Act of May 29, 1997, 75th Leg., R.S. ch. 1187, 1997 Tex. Sess. Law Serv. 4575 (Vernon), (to be codified at Transp. Code § 550.065). However, a Travis County district court has issued a temporary injunction enjoining the enforcement of the amendment to section 550.065 of the Transportation Code. *Texas Daily Newspaper Ass'n v. Morales*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., Oct. 24, 1997) (second amended agreed temporary injunction). A temporary injunction preserves the status quo until the final hearing of a case on its merits. *Janus Films, Inc. v. City of Fort Worth*, 163 Tex. 616, 617, 358 S.W.2d 589, 589 (1962). The supreme court has defined the status quo as "the last, actual peaceable, non-contested status that preceded the pending controversy." *Texas v. Southwestern Bell Tel. Co.* 526 S.W.2d 526, 528 (Tex. 1975). The status quo of accident report information prior to the enactment of Senate Bill 1069 is governed by section 47 of article 6701d, V.T.C.S.²

Section 47(b)(1) provides that:

The Department or a law enforcement agency employing a peace officer who made an accident report *is required to release a copy of the report* on request to:

.....

(D) a person who provides the Department or the law enforcement agency with two or more of the following:

- (i) the date of the accident;
- (ii) the name of any person involved in the accident; or
- (iii) the specific location of the accident

²Although the Seventy-fourth Legislature repealed and codified article 6701d as part of the Transportation Code, the legislature did not intend a substantive change of the law but merely a recodification of existing law. Act of May 1, 1995, 74th Leg., R.S., ch. 165, §§ 24, 25 1995 Tex. Sess. Law Serv. 1025, 1870-71. Furthermore, the Seventy fourth Legislature, without reference to the repeal and codification of V.T.C.S. article 6701d, amended section 47 of article 6701d, V.T.C.S., relating to the disclosure of accident reports. Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Sess. Law Serv. 4413, 4414. Because the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code, the amendment is preserved and given effect as part of the code provision. Gov't Code § 311.031(c). Thus, the amendment of section 47 of article 6701d, V.T.C.S. is the existing law regarding the availability of accident report information, and may be found following section 550.065 of the Transportation Code. See also Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Sess. Law Serv. 4413, 4414.

V.T.C.S. art. 6701d, § 47(b)(1) (emphasis added). Under this provision, a law enforcement agency "is required to release" a copy of an accident report to a person who provides the law enforcement agency with two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has provided the department with the date of the accident and the names of persons involved in the accident, as well as the location of the accident. Thus, you are required to release the accident reports under section 47(b)(1)(D) of article 6701d, V.T.C.S.

Section 552.101 also excepts from disclosure information that if disclosed would constitute an invasion of an individual's privacy. Information must be withheld from disclosure under a common-law right of privacy if the information is highly intimate or embarrassing *and* if it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 682 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 328 (1982). You do not explain how the limited type of information contained in the daily log sheets would meet this test.³ We recognize, however, that there may exist other types of information in the dispatch logs that may be confidential pursuant to various statutory provisions. Section 552.352 of the Government Code provides that distribution of confidential information is a misdemeanor offense and constitutes an act of official misconduct. The requested records must be released unless a confidentiality provision prohibits disclosure of individual entries into the dispatch logs.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

³We also note that in Open Records Decision No. 394 (1983), this office determined that there was no qualitative difference between the information contained in police dispatch records and that which was expressly held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See also Open Records Decision No. 127 (1976) (summarizing holding in *Houston Chronicle*).

VDP/gle

Ref.: ID# 111196

Enclosures: Submitted documents
Confidentiality provisions

cc: Mr. Peter D. Kennedy
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(w/confidentiality provisions)